

Condensed Transcript

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE FORCE PROTECTION, INC.
SECURITIES LITIGATION

Consolidated
Civil Action
No. 2:08-cv-845-CWH

CONFIDENTIAL VIDEOTAPED DEPOSITION OF
DAVID JAGER

February 12, 2010
10:10 a.m.

Suite 2400
131 South Dearborn Street
Chicago, IL.

Anne E. Fogarty, Certified Shorthand Reporter



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<p style="text-align: center;">33</p> <p>1 and answered.</p> <p>2 BY MR. LEE:</p> <p>3 Q. You can answer the question.</p> <p>4 A. I don't recall a specific date. There</p> <p>5 was an intervening call.</p> <p>6 Q. Was it during the month of January?</p> <p>7 MS. SMOLLAR: Objection.</p> <p>8 You can answer.</p> <p>9 BY THE WITNESS:</p> <p>10 A. It could have been January. I don't</p> <p>11 remember it specifically.</p> <p>12 BY MR. LEE:</p> <p>13 Q. Do you have any recollection as to how</p> <p>14 long ago that call was relative to today's date?</p> <p>15 MS. SMOLLAR: Objection.</p> <p>16 You can answer.</p> <p>17 BY MR. LEE:</p> <p>18 Q. You can always answer unless she tells</p> <p>19 you not to. She'll be specific.</p> <p>20 A. Okay.</p> <p>21 So I believe it was in 2010.</p> <p>22 Q. Okay. Who participated in that</p> <p>23 telephone call in 2010?</p> <p>24 A. Jason Cowart. That was it.</p>	<p style="text-align: center;">35</p> <p>1 A. I think the answer to that is yes. I</p> <p>2 signed some documents and we exchanged them.</p> <p>3 Q. Okay. Do you know Jim Capasso?</p> <p>4 A. That name is familiar. I don't know him</p> <p>5 personally.</p> <p>6 Q. You've never met personally with Jim</p> <p>7 Capasso?</p> <p>8 A. No.</p> <p>9 Q. Have you ever spoken on the phone with</p> <p>10 Jim Capasso?</p> <p>11 A. Not directly. I don't know if he was on</p> <p>12 a conference call when we were there. I don't</p> <p>13 recall specifically.</p> <p>14 Q. Okay. Have you ever met in person with</p> <p>15 any person that you recognize as a representative of</p> <p>16 an entity called the Laborers' Annuity and Benefit</p> <p>17 Fund of Chicago?</p> <p>18 A. No.</p> <p>19 Q. Ever spoken on the phone with such a</p> <p>20 person?</p> <p>21 A. No direct communication. If they were</p> <p>22 on a conference call, I didn't know about it.</p> <p>23 Q. Okay.</p> <p>24 A. I don't know.</p>
<p style="text-align: center;">34</p> <p>1 Q. Just you and Jason Cowart?</p> <p>2 A. Yes.</p> <p>3 Q. And I just want to be clear. Are you</p> <p>4 saying those are the only two people that you</p> <p>5 remember being on the call or you're certain that</p> <p>6 the only two people on the call were yourself and</p> <p>7 Mr. Cowart?</p> <p>8 MS. SMOLLAR: Objection.</p> <p>9 BY THE WITNESS:</p> <p>10 A. So I believe we were the only two on the</p> <p>11 line.</p> <p>12 BY MR. LEE:</p> <p>13 Q. Okay. And prior to today those are the</p> <p>14 only two telephone calls you can remember that you</p> <p>15 participated in with members of the Pomerantz firm?</p> <p>16 MS. SMOLLAR: Objection.</p> <p>17 BY THE WITNESS:</p> <p>18 A. Those are two that I recall. I'm not</p> <p>19 certain if there was another time in there that we</p> <p>20 spoke.</p> <p>21 BY MR. LEE:</p> <p>22 Q. Okay.</p> <p>23 Have you ever had any written</p> <p>24 correspondence with lawyers at the Pomerantz firm?</p>	<p style="text-align: center;">36</p> <p>1 Q. Do you know Gary Trautman?</p> <p>2 A. Yes. Not personally, I know the name.</p> <p>3 Q. Where do you know the name from?</p> <p>4 A. He's part of the group, the lead</p> <p>5 plaintiff.</p> <p>6 Q. Have you ever met with Mr. Trautman in</p> <p>7 person?</p> <p>8 A. No.</p> <p>9 Q. Have you ever spoken directly on the</p> <p>10 phone to Mr. Trautman?</p> <p>11 A. Not directly. Again, I don't know if he</p> <p>12 was on a conference call.</p> <p>13 Q. I'm not going to mark this again. This</p> <p>14 was marked yesterday as Poulikakos 2. Or not</p> <p>15 yesterday; rather, this was marked on the Panteli</p> <p>16 Poulikakos deposition on February 10 as Poulikakos</p> <p>17 2. It is a document styled as Joint Declaration in</p> <p>18 Support of the Chicago Laborers Group's Motion for</p> <p>19 Appointment as Lead Plaintiff and for Approval of</p> <p>20 its Selection of Lead Counsel.</p> <p>21 Mr. Jager, please take the time you need</p> <p>22 to look through the document. We'll get to specific</p> <p>23 questions, but I just want to see first if you</p> <p>24 recognize the document?</p>



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<p style="text-align: center;">41</p> <p>1 teleconference to discuss the status and management 2 of this action." Do you see that, sir?</p> <p>3 A. Yes.</p> <p>4 Q. Do you recall participating in that May 5 27, 2008, telephone conference?</p> <p>6 MS. SMOLLAR: Objection.</p> <p>7 BY THE WITNESS:</p> <p>8 A. No.</p> <p>9 BY MR. LEE:</p> <p>10 Q. The next sentence reads: "Pursuant to 11 that discussion, we have agreed to jointly 12 participate in conference calls with counsel as 13 necessary, and in any event at least quarterly in 14 addition to regular written updates." Do you see 15 that?</p> <p>16 A. Yes.</p> <p>17 Q. When you signed this document on May 27, 18 2008, Mr. Jager, was it your understanding that -- 19 well, strike that.</p> <p>20 When you signed this document, had you 21 agreed to participate in conference calls with 22 counsel as necessary, and in any event at least 23 quarterly?</p> <p>24 MS. SMOLLAR: Objection; lack of foundation,</p>	<p style="text-align: center;">43</p> <p>1 necessary but you weren't committing that you would 2 participate at least quarterly; is that correct?</p> <p>3 MS. SMOLLAR: Objection.</p> <p>4 You can answer.</p> <p>5 BY THE WITNESS:</p> <p>6 Q. Me personally my agreement was not 7 necessarily quarterly.</p> <p>8 BY MR. LEE:</p> <p>9 Q. Okay.</p> <p>10 MS. SMOLLAR: David, are you okay? Do you 11 need a break? We've been going a little over an 12 hour now, so.</p> <p>13 THE WITNESS: I'm okay.</p> <p>14 MS. SMOLLAR: Okay. Let's go another 15 or so 15 minutes and then take a break.</p> <p>16 MR. LEE: Sure, that's fine. We can take a 17 break any time today, sir.</p> <p>18 THE WITNESS: Okay. Thank you.</p> <p>19 BY MR. LEE:</p> <p>20 Q. All right. Still looking at Paragraph 9 21 of this document, Mr. Jager, and the same sentence 22 that we've been focusing on, the end of the sentence 23 refers to "regular written updates." Do you see 24 that?</p>
<p style="text-align: center;">42</p> <p>1 misleading.</p> <p>2 BY MR. LEE:</p> <p>3 Q. You can answer the question.</p> <p>4 A. So I agreed to meet as necessary with 5 counsel. And I also understood that I wasn't 6 initially necessary to participate in discussion 7 with counsel unless specifically requested, or if I 8 was interested in it I was welcome to participate in 9 initial contact.</p> <p>10 Q. What I'm trying to understand is after 11 May 27, 2008, did you agree to jointly participate 12 in conference calls with counsel as necessary, and 13 in any event at least quarterly?</p> <p>14 MS. SMOLLAR: Objection; lack of foundation, 15 form, misleading.</p> <p>16 You can answer.</p> <p>17 BY THE WITNESS:</p> <p>18 A. Me personally I didn't agree -- I agreed 19 to be there as necessary but not necessarily 20 quarterly.</p> <p>21 BY MR. LEE:</p> <p>22 Q. Okay. So at the time you signed this 23 document your understanding was that you would 24 participate in calls, meetings, whatever, as</p>	<p style="text-align: center;">44</p> <p>1 A. Yes.</p> <p>2 Q. Since May 27, 2008, have you received 3 regular written updates regarding this lawsuit?</p> <p>4 MS. SMOLLAR: Objection.</p> <p>5 You can answer.</p> <p>6 BY THE WITNESS:</p> <p>7 A. So as there are developments in the case 8 I get copies of the documents that are involved.</p> <p>9 BY MR. LEE:</p> <p>10 Q. Okay. Can you think of anything else in 11 the way of regular written updates that you've 12 received?</p> <p>13 MS. SMOLLAR: Objection.</p> <p>14 BY THE WITNESS:</p> <p>15 A. No.</p> <p>16 BY MR. LEE:</p> <p>17 Q. Do you keep a file relating to this 18 lawsuit?</p> <p>19 A. I have some saved e-mails, that's all.</p> <p>20 Q. No physical hard paper document file?</p> <p>21 A. No.</p> <p>22 Q. Are the e-mails e-mails between you and 23 your attorneys in this lawsuit?</p> <p>24 A. Some.</p>



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1 MS. SMOLLAR: Objection.

2 BY THE WITNESS:

3 A. If I weren't asked to?

4 BY MR. LEE:

5 Q. Let me ask you a different question.

6 As you sit here today can you think of
7 any reason other than being asked to do so by your
8 attorneys that you would participate in a court
9 appearance in this case?

10 MS. SMOLLAR: Objection, but you can answer.

11 BY THE WITNESS:

12 A. Well, as lead plaintiff if I've had some
13 disagreement in the process of litigation or
14 something like that, I might engage another source
15 to arrange something like that. But I have no
16 indication that there is any problems at this point
17 and I don't see a need for that.

18 BY MR. LEE:

19 Q. Okay. Let's look at Paragraph 10. And
20 just at the outset, this paragraph has three
21 sentences that have "we," talking about what, quote,
22 we understand or believe or plan to do. Did you
23 understand when you signed this document that you
24 were joining in the representations made in

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1 adequate to represent the interests of the class,
2 correct?

3 A. Yes.

4 Q. At the time you signed this document
5 what was the basis for that belief?6 A. So it's based on recommendations from
7 Panteli Poulikakos.8 Q. Okay. Other than those representations
9 from Panteli Poulikakos did you do anything
10 personally to satisfy yourself that Berman DeValerio
11 was highly qualified and adequate to represent the
12 interests of the class?13 MS. SMOLLAR: Objection, mischaracterization
14 of prior testimony.

15 BY THE WITNESS:

16 Q. No, I trusted Panteli's opinion in this
17 regard.

18 BY MR. LEE:

19 Q. Okay. And other than -- other than
20 getting Panteli's opinions, did you do anything
21 prior to signing this document to satisfy yourself
22 that the Pomerantz law firm was highly qualified and
23 adequate to represent the interests of the class?

24 A. Nothing more than consulting with

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1 Paragraph 10?

2 A. Yes.

3 Q. So the first sentence reads, "We
4 understand that Lead Plaintiffs' role under the
5 PSLRA is to select and retain Lead Counsel and to
6 supervise the prosecution of lawsuit." Do you see
7 that?

8 A. Yes.

9 Q. What is the PSLRA?

10 MS. SMOLLAR: Objection.

11 BY THE WITNESS:

12 A. I assume it's the governing body that --
13 I understand it to be the governing body that
14 provides the process in which -- the process
15 required to proceed with these proceedings.

16 BY MR. LEE:

17 Q. Okay. The next sentence says, "We
18 believe that Berman DeValerio and Pomerantz are
19 highly qualified and adequate to represent the
20 interests of the Class." Do you see that?

21 A. Yes.

22 Q. At the time you signed this document on
23 May 27, 2008, you held the belief that Berman
24 DeValerio and Pomerantz are highly qualified and

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1 Panteli Poulikakos.

2 Q. Okay. The last sentence of Paragraph 10
3 reads, "Moreover, we are committed to overseeing
4 Co-Lead Counsel's prosecution of this litigation, in
5 order to ensure that the matter is handled
6 efficiently and without duplication of work." Do
7 you see that?

8 A. Yes.

9 Q. What have you personally done to ensure
10 that this matter is handled efficiently?11 A. Well, I review updates and developments
12 in the case when they're available and make sure
13 that the information that I've been presented makes
14 sense and is coherent.15 Q. Mr. Jager, still looking at this same
16 document, I'd like you to turn to the page that at
17 the top is marked Page 9 of 18, and specifically I'd
18 like to direct your attention to Paragraph 6, which
19 starts on that page and continues on to the next
20 page. Please just take a second to read over that
21 paragraph.

22 (WHEREUPON, a short pause was had.)

23 BY THE WITNESS:

24 Q. Okay.



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<p style="text-align: center;">101</p> <p>1 A. So I remember the ones I imagined, but I 2 didn't actually search locations that could contain 3 documents like that because I didn't believe that I 4 retained any information during the class period. 5 There is a document cutoff date, prior to the 6 document cutoff date, so as I searched my soul I 7 couldn't find anything and I didn't produce any 8 documents in response to this request.</p> <p>9 Q. Okay. What was the document cutoff date 10 that you just mentioned?</p> <p>11 A. I don't recall what it was specifically. 12 Is it in here?</p> <p>13 MS. SMOLLAR: I'm just going to object here. 14 The question --</p> <p>15 BY MR. LEE:</p> <p>16 Q. It's not in here.</p> <p>17 MS. SMOLLAR: I just want to object to your 18 question on the witness with respect to what is the 19 document cutoff date because I think that we have 20 taken a position about what documents in terms of 21 dates would be relevant to defendants and we've told 22 the defendants our position and produced documents 23 pursuant to that date.</p> <p>24 MR. LEE: Let me just look at what it is you</p>	<p style="text-align: center;">103</p> <p>1 Okay. I read that as a representation 2 that documents that date from a time after March 14, 3 2008, yet refer to class period events may still be 4 produced.</p> <p>5 MS. SMOLLAR: Not the documents, though, that 6 were created after the case has been filed, even if 7 they refer to.</p> <p>8 MR. LEE: Well, he's testified that there is a 9 cutoff date. I just want to find out what he thinks 10 it is.</p> <p>11 MS. SMOLLAR: Okay. But I'm just saying I 12 think the position we took is we didn't produce 13 documents that were created after the date of the 14 first filing in this case. But you can ask --</p> <p>15 MR. LEE: Is that set forth in something that 16 you've provided to us?</p> <p>17 MS. SMOLLAR: Yes, it is. And I believe it -- 18 I don't know if it was oral or a letter from Jason 19 Cowart or --</p> <p>20 MR. DAHLSTROM: You can ask him the questions 21 on the cutoff. We can deal with this after.</p> <p>22 MR. LEE: Yeah, we'll take this up later.</p> <p>23 MS. SMOLLAR: Yeah, that's fine.</p> <p>24 BY MR. LEE:</p>
<p style="text-align: center;">102</p> <p>1 did tell us --</p> <p>2 MS. SMOLLAR: Okay.</p> <p>3 MR. LEE: -- again.</p> <p>4 (WHEREUPON, a short pause was had.)</p> <p>5 MR. LEE: Counsel, I'm reading from the Lead 6 Plaintiff's Responses and Objections to Defendants' 7 First Set of Request for Production of Documents. 8 Let me get you a copy.</p> <p>9 (WHEREUPON, the document was tendered 10 to counsel.)</p> <p>11 MR. LEE: I'm looking at Page 7 of the 12 document under Paragraph 5 of your -- of the Lead 13 Plaintiffs' Objections to Defendant's Instructions. 14 The very last sentence of that paragraph reads, "As 15 to the governing time period, unless expressly 16 stated otherwise in any specific response, lead 17 plaintiffs will produce nonprivileged responsive 18 documents prepared, generated or published during 19 the time period from January 1, 2006, through 20 March 14, 2008, and nonprivileged responsive 21 documents prepared, generated or published after the 22 relevant period that relate to both -- relate both 23 to events during the relevant period and the claims 24 or defenses in this action."</p>	<p style="text-align: center;">104</p> <p>1 Q. So the question, Mr. Jager, is you 2 testified you understood there to be a cutoff date 3 as to documents you might collect. What, as you sit 4 here today, is your understanding of what that date 5 is?</p> <p>6 A. So I have -- so I get updates on 7 progress in this case. Any new filings, any new 8 developments I get copies of documents. And as I 9 understand it I wasn't required to provide those 10 documents again. And that was, you know, most of 11 the type of stuff that I could produce, I could 12 physically produce for you, and it wasn't required.</p> <p>13 Q. So you understand that you didn't 14 have -- you were under no obligation to search for 15 any documents that postdated what, your appearance 16 in this lawsuit?</p> <p>17 MS. SMOLLAR: Objection.</p> <p>18 BY THE WITNESS:</p> <p>19 A. No. No, it was more current documents 20 that communications between -- recent communications 21 between the groups and copies of these documents 22 that we're reviewing here I didn't need to produce 23 those is my understanding.</p> <p>24 BY MR. LEE:</p>



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